

1 **ARIZONA STATE BANKING DEPARTMENT**

2 In the Matter of the Collection Agency License of:

No. 06F-BD019-BNK

3 **NATIONAL CREDIT SYSTEMS, INC. AND**
4 **JOEL LACKEY, PRESIDENT**

3800 Camp Creek Parkway, Bldg. 1800, Suite 110
Atlanta, Georgia 30331

CONSENT ORDER

5
6 Petitioners.

7
8 On November 23, 2005, the Arizona State Banking Department ("Department") issued a
9 Notice of Hearing, alleging that Petitioners had violated Arizona law. Wishing to resolve this matter
10 in lieu of an administrative hearing, Petitioners do not contest the following Findings of Fact and
11 Conclusions of Law, and consent to the entry of the following Order.

12 **FINDINGS OF FACT**

13 1. Petitioner National Credit Systems, Inc. ("NCS") is a Georgia corporation authorized
14 to transact business in Arizona as a collection agency, license number CA 904223, within the
15 meaning of A.R.S. §§ 32-1001, *et seq.* The nature of NCS's business is that of soliciting claims for
16 collection and collection of claims owed, due, or asserted to be owed or due within the meaning of
17 A.R.S. §§ 32-1001(A)(2)(a) and (A)(5).

18 2. Petitioner Joel Lackey ("Mr. Lackey") is the president of NCS. Mr. Lackey is
19 authorized to transact business in Arizona as a collection agency within the meaning of A.R.S.
20 §§ 32-1001(A)(2)(a) and (A)(5).

21 3. Neither NCS nor Mr. Lackey is exempt from licensure as a collection agency within
22 the meaning of A.R.S. § 32-1004.

23 4. On August 23, 2005, the Department conducted an examination of NCS's business
24 affairs. As a result of the examination, the Department discovered that NCS and Mr. Lackey:

25 a. failed to leave monies due to clients in the trust account until those monies or
26 equivalent monies were remitted to clients as evidenced by trust shortages during nine

1 months of the twelve-month review period and failed to maintain a segregated trust account
2 labeled as a "trust account";

3 b. commingled trust funds with company funds and maintained trust funds in the
4 operating account; and

5 c. failed to meet their financial responsibility by failing to maintain a positive net
6 worth, specifically: the company's balance sheet listed a negative net worth in the amount of
7 three million nine hundred fifty-six thousand four hundred eighteen dollars (<\$3,956,418>)
8 as of June 30, 2005.

9 5. Based upon the above findings, the Department issued and served upon NCS and Mr.
10 Lackey an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order
11 ("Order to Cease and Desist") on October 6, 2005.

12 6. On November 2, 2005, Petitioners filed a Request for Hearing to appeal the Order to
13 Cease and Desist.

14 7. NCS has provided documentation to the Department regarding its negative net worth.
15 Mr. Lackey became the 100 percent owner of the company on June 20, 2004, when the company
16 repurchased his partner's 50 percent stock ownership. The stock buyback was financed by Merrill
17 Lynch and resulted in treasury stock of \$6,424,625.00 being recorded as a reduction to the equity
18 section of the company's balance sheet. Mr. Lackey's personal assets, as well as the assets of
19 another individual, secure the Merrill Lynch loan. The company remains profitable with a year to
20 date net profit of \$2,166,196.00 for the six months ending June 30, 2005. The company's net worth
21 has improved from negative \$6,465,162.00 as of September 30, 2004 to negative \$3,956,418.00 as
22 of June 30, 2005.

23 CONCLUSIONS OF LAW

24 1. Pursuant to Title 6 and Title 32, Chapter 9, of the Arizona Revised Statutes, the
25 Superintendent has the authority and duty to regulate all persons engaged in the collection agency
26 business and with the enforcement of statutes, rules, and regulations relating to collection agencies.

2. By the conduct set forth in the Findings of Fact, NCS and Mr. Lackey have violated statutes and rules governing collection agencies as follows:

a. A.R.S. § 32-1055(D) by failing to leave monies due to clients in the trust account until those monies or equivalent monies were remitted to clients as evidenced by trust shortages during nine months of the twelve-month review period and failing to maintain a segregated trust account labeled as a "trust account";

b. A.A.C. R20-4-1505(C) by commingling trust funds with company funds and maintaining trust funds in the operating account; and

c. A.R.S. §§ 32-1051(1) and 32-1053(A)(1) by failing meet their financial responsibility and failing to maintain a positive net worth, thereby being insolvent within the meaning of A.R.S. § 47-1201(23).

3. The violations set forth above constitute grounds for (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions, and (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132.

ORDER

1. NCS and Mr. Lackey shall immediately correct all violations set forth in the Findings of Fact and in the Report of Examination. NCS and Mr. Lackey:

a. shall maintain sufficient funds in the trust account to meet their responsibility to clients at all times;

b. shall not commingle trust funds with company funds;

c. shall submit, on or before April 15, 2006, a financial statement as of December 31, 2005 that is audited by a certified public accountant;

d. shall submit on a quarterly basis an internally prepared balance sheet and income statement, which shall be due on the fifteenth of April, July, and October of 2006;

- 1 e. shall maintain a positive net worth by October 31, 2006; and
- 2 f. shall deposit all debtor payments into a trust account and shall immediately
- 3 cease the sweeping of the trust account and the use of trust funds for any purpose other than
- 4 remittances to clients.
- 5 2. NCS and Mr. Lackey shall pay a civil money penalty in the amount of six thousand
- 6 dollars (\$6,000.00). NCS and Mr. Lackey are jointly and severally liable for payment of the civil
- 7 money penalty.
- 8 3. The provisions of this Order shall be binding upon NCS and Mr. Lackey, their
- 9 employees, agents, and other persons participating in the conduct of the affairs of NCS.
- 10 4. This Order shall become effective upon service, and shall remain effective and
- 11 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated
- 12 or set aside.

13 SO ORDERED this 9th day of January, 2007⁶.

14 Richard C. Houseworth
15 Superintendent of Banks

16 By Bruce Tunell
17 Bruce Tunell
18 Deputy Superintendent of Banks

19 **CONSENT TO ENTRY OF ORDER**

- 20 1. Petitioners acknowledge that they have been served with a copy of the foregoing
- 21 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
- 22 same, are aware of their right to an administrative hearing in this matter, and have waived the same.
- 23 2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the
- 24 foregoing Findings of Fact, Conclusions of Law, and Order.
- 25 3. Petitioners state that no promise of any kind or nature has been made to induce them
- 26 to consent to the entry of this Order, and that they have done so voluntarily.

4. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

5. Joel Lackey, signing on behalf of National Credit Systems, Inc., represents that he is the president, and as such, has been authorized by National Credit Systems, Inc. to consent to the entry of this Order on its behalf.

6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the validity of the Cease and Desist Order or Notice of Hearing.

DATED this 22nd day of December, 2005.

By: Joel Lackey, President
National Credit Systems, Inc.

ORIGINAL of the foregoing filed this 10th
day of September, 2005, in the office of:

Richard C. Houseworth
Superintendent of Banks
Arizona State Banking Department
ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

COPY mailed/delivered same date to:

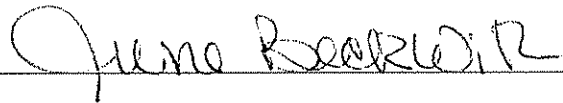
Daniel Martin
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1 Craig A. Raby
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3 Phoenix, AZ 85007

4 Robert D. Charlton, Assistant Superintendent
Jack E. Watson, Senior Examiner
5 Arizona State Banking Department
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6 Phoenix, AZ 85018

7 AND COPY MAILED SAME DATE by
8 Certified Mail, Return Receipt Requested, to:

9 Joel Lackey, President
National Credit Systems, Inc.
10 3800 Camp Creek Parkway, Bldg. 1800, Suite 110
Atlanta, GA 30331

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